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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/084,966

02/27/2002

Ben E. Jaeger

BRI 40016

2200

7590

11/12/2003

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EXAMINER

RAEVIS, ROBERT R

ART UNIT

PAPER NUMBER

2856

DATE MAILED: 11/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/084,966

Applicant(s)

JAEGER, BEN E.

Examiner

Robert R. Raevis

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 13-21 and 26-28 is/are rejected.
- 7) ☒ Claim(s) 6-12, 22-25 and 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### DETAILED ACTION

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-28 are rejected under 35 U.S.C. 103(a) as obvious over Jaeger '145.

Jaeger teaches a method to sample, including: providing a body with bore 34, positioning a plunger 146 with bore 102 in the bore, extending the plunger to a sample receiving position (dashed lines in Figure 1a), retracting the plunger to a sample delivery position (solid lines in Figure 1a), removing the sample, moving the plunger forward to a parked position intermediate the sample delivering and receiving positions (see col. 7, lines 17-62), and using a motor means to maintain ("remains energized" on col. 7, line 59) the sampler in a locked position.

Jaeger does not use the term "locking", and the material sampled is not a dry product.

As to claims 26-28, Jaeger's "remains energized... 144" (col. 7, lines 59-62) suggests a locked plunger. In addition, it would have been obvious to sample a dry product because Wagener et al teach that solid materials may be sampled with a meter type sampler. It is known that dry solid materials are sampled from a tank, suggestive of use of Jaeger's sampler therein.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 13, 14, 16 and 17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Jaeger '145.

Jaeger's device includes: body 32 with bore 34, plunger 150, means to reciprocate 98, and locking means 56.

As to claims 1-5, 13, 14, 16 and 17, please note that Jaeger's shaft 98 is the structural element that reciprocates the plunger 150, and that it does so as much as Applicant's disclosed rod 54. It is this shaft 98 movement that positions the plunger in each of the three claimed positions.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jaeger as applied against claim 1, and further in view of Wagener et al.

In addition, it would have been obvious to sample a dry product because Wagener et al teach that solid materials may be sampled with a meter type sampler. It is known that dry solid materials are sampled from a tank, suggestive of use of Jaeger's sampler therein.

Claims 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jaeger '145 in view of Wagener et al.

As to claims 18-21, it would have been obvious to sample a dry product because Wagener et al teach that solid materials may be sampled with a meter type sampler. It

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is known that dry solid materials are sampled from a tank, suggestive of use of Jaeger's sampler therein.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Abonnenc teaches slot 32 usage.

Claims 6-12, 22-25, 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert R. Raevis whose telephone number is 703-305-4919. The examiner can normally be reached on Monday to Friday from 6:30am to 4:00pm. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7722.

*Raevis*

*RAEVIS*

*AU2856*